

**Senate Standing Committee
for the
Scrutiny of Bills**

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Senate Standing Committee for the Scrutiny of Bills

Members of the Committee

Senator M Fifield (Chair)
Senator C Brown (Deputy Chair)
Senator M Bishop
Senator S Edwards
Senator G Marshall
Senator R Siewert

Terms of Reference

Extract from **Standing Order 24**

- (1) (a) At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
- (b) The committee, for the purpose of reporting upon the clauses of a bill when the bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

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Senate Standing Legislation Committee Inquiries

The committee will forward any comments it has made on a bill to any relevant legislation committee for information.

• The Committee has commented on these bills

This Digest is circulated to all Honourable Senators.
Any Senator who wishes to draw matters to the attention of the Committee under its terms of reference is invited to do so.

Appropriation Bill (No.3) 2011-2012

Introduced into the House of Representatives on 8 February 2012

Portfolio: Finance and Deregulation

Background

This bill appropriates \$2.8 billion from the Consolidated Revenue Fund to meet payments for the ordinary annual services of the Federal Government, in addition to those provided in the 2010-2011 Budget.

The Committee has no comment on this bill.

Appropriation Bill (No.4) 2011-2012

Introduced into the House of Representatives on 8 February 2012

Portfolio: Finance and Deregulation

Background

This bill appropriates a little over \$341 million from the Consolidated Revenue Fund, for services that are not the ordinary annual services of the Federal Government, in addition to those provided in the 2010-11 Budget.

The Committee has no comment on this bill.

Aviation Transport Security Amendment (Screening) Bill 2012

Introduced into the House of Representatives on 16 February 2012

Portfolio: Infrastructure and Transport

Background

This bill amends the *Aviation Transport Security Act 2004* and is designed to facilitate the introduction of body scanners at international airports. The principal measure is to provide that a person is taken to consent to any screening procedure when that person is at a screening point and must receive clearance in order to board an aircraft or to enter an area of a security-controlled airport. The explanatory memorandum contains a Statement of Compatibility with Human Rights (SOC).

Trespass on personal rights and liberties

Item 4, repeal existing section 95A

Item 4 seeks to repeal existing section 95A, which provision currently allows a person to choose a frisk search over another screening procedure. The explanatory memorandum at page 3 states that this amendment will enable the introduction of a policy whereby a person selected to pass through a body scanner may not choose an alternative screening method and that this ‘will ensure that the strongest security outcome is achieved from the technology’.

This encroachment on the right to freedom of movement, to the extent an option of a frisk search is removed, is justified in the SOC on the basis that (1) body scanners offer the greatest chance of detection of security threats, those threats being asserted to be serious and continuing, and (2) a full body frisk, which may be thought to achieve a similar outcome to a body scanner, would ‘involve a frisk of the entire body, including sensitive areas, as well as the possible loosening and/or removing of some clothing’ (see the explanatory memorandum at page 3). Further in relation to (2) above, it is stated that ‘it is unlikely that any passenger who fully understands the procedures and the technology would opt for an enhanced full body frisk in preference to a body scan’, for which a person has been randomly selected.

In the circumstances, **the Committee leaves the question of whether the right to freedom of movement has been limited in an appropriate, reasonable and proportionate manner is left to the consideration of the Senate as a whole.**

The Committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Insufficiently defined legislative powers

Item 4, repeal existing section 95A

As suggested above, the question of whether the overall policy approach underlying this amendment is appropriate is left to the Senate as a whole. However, the explanatory memorandum, at page 6, notes that in applying the requirement that all persons who have been selected to pass through a body scanner may not choose an alternative screening procedure, allowances 'will be made where there is a physical or medical reason that would prevent a person being screened by a body scanner'. In the SOC it is stated that the rights of persons with disability are not inappropriately affected as 'the Government is making appropriate modifications to ensure that individuals who cannot undergo a certain screening procedure due to a physical or medical condition will be screened by alternative methods that are more suitable to their circumstances' (see page 4 of the explanatory memorandum). The SOC also notes, at page 5, that preparations for the introduction of body scanners has led to an 'increased focus on the training of aviation security screening officers to ensure that people with a disability are treated in a compassionate manner'.

Although the Committee accepts these assurances, based on the proposed amendments it is unclear exactly how alternative screening procedures and compassionate treatment for persons with disabilities or medical conditions will be guaranteed in appropriate circumstances. It is not clear to the Committee whether the appropriateness of alternative procedures will be left to the discretion of security screening officers or whether the legislation can provide for guidelines to be developed. **The Committee therefore seeks a further explanation of how the application of alternative screening procedures in appropriate circumstances will be administered and**

regulated, and whether consideration has been given to providing in the legislation for the development of appropriate guidelines.

Pending the Minister's reply, the Committee draws Senators' attention to the provisions, as they may be considered to make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, in breach of principle 1(a)(ii) of the Committee's terms of reference.

Trespass on personal rights and liberties

Schedule 1, item 1, proposed section 41A

Schedule 1, item 3, proposed paragraph 4(3)(3B)

Item 1 of Schedule 1 proposes a new section 41A. This provision deems consent to have been given to conduct screening procedures, including body scans but excluding frisk searches, unless a person expressly refuses to undergo a procedure. It is noted that the Statement of Compatibility acknowledges that screening procedures are of concern from the perspective of the protection of an individual's privacy, and the Committee adds that this concern is heightened when consent to procedures is deemed. However, the SOC, at page 3 of the explanatory memorandum, states that the Office of the Australian Information Commissioner (OAIC) has been closely involved with the development of a comprehensive privacy impact assessment to protect a passenger's right to privacy.

Particularly in relation to the introduction of body scanners, it is stated that this technology is less intrusive than the only realistic alternative that could provide similar outcomes (full frisk searches) and that the implementation of 'automatic threat recognition technology' will mean that areas of concern are only displayed on a 'generic human representation that is the same for all passengers'. This technology removes the need for a 'human operator to look at raw or detailed images, and therefore maintains the privacy and modesty of all individuals'. Finally, it is stated that the 'body scanners that are introduced in Australia will not be capable of storing or transmitting any information or data' (also at page 3 of the explanatory memorandum).

In support of this approach, item 3 proposes a new paragraph 4(3)(3B) which provides that if body scanning equipment is used for screening a person, then any image 'must only be a generic body image that is gender-neutral and from which the person cannot be identified'. In light of the detailed explanation in

the explanatory memorandum, the Committee leaves to the consideration of the Senate as a whole the general question of whether the overall approach is reasonable and proportionate.

However, the Committee is concerned that the important safeguard mentioned in the explanatory memorandum that the machines introduced into Australia won't be able to store or transmit data is not a legislative requirement. It is unclear why the legislation (properly) prohibits the use of images that are not generic, but does not take a similar approach to the use of equipment that may store or transmit data. **The Committee therefore seeks the Minister's advice as to whether the legislation can be amended to require that scanners not be capable of storing or transmitting data or that these functions are disabled or removed.**

Pending the Minister's advice, the Committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Classification (Publications, Films and Computer Games) Amendment (R 18+ Computer Games) Bill 2012

Introduced into the House of Representatives on 15 February 2012

Portfolio: Justice

Background

This bill amends the *Classification (Publications, Films and Computer Games) Act 1995* to introduce an R 18+ (Restricted) category for computer games and makes a consequential amendment to the *Broadcasting Services Act 1992* to recognise the introduction of an R 18+ category for computer games.

Delayed Commencement

Clause 2

The bill will not commence until January 2013 (clause 2). Where there is a delay in commencement of legislation longer than six months it is appropriate for the explanatory memorandum to outline the reasons for the delay in accordance with paragraph 19 of Drafting Direction No 1.3. In this case, no explanation is provided in the explanatory memorandum for the delay. The Committee can understand that there are reasons that the beginning of a new calendar year is an appropriate date for commencement, **but given the possibility of delayed commencement seeks the Minister's advice about the justification for the proposed approach.**

Pending the Minister's advice, the Committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Statement of compatibility with Human Rights

The Committee notes that comments about statements of compatibility will primarily be the responsibility of the Parliamentary Joint Committee on Human Rights when that committee is established. However, some issues

relating to human rights also fall within the Scrutiny Committee's terms of reference.

In light of the above, the Committee therefore notes that it does not agree with the statements on page 2 of the explanatory memorandum that 'This Bill does not engage any of the applicable rights or freedoms' and '...it does not raise any human rights issues.' It appears to the Committee that a classification system that restricts access to forms of speech and expression inevitably engages the right to free speech. However, the Committee notes that the restrictions are arguably proportionate and makes no further comment on this occasion.

Corporations Amendment (Phoenixing and Other Measures) Bill 2012

Introduced into the House of Representatives on 15 February 2012

Portfolio: Treasury

Background

This bill amends the *Corporations Act 2001* to:

- introduce an administrative process for compulsory external administration to facilitate payment of employee entitlements where a company has been abandoned;
- include a regulation making power to prescribe methods of publication of notices relating to events before, during and after the external administration of a company; and
- make other miscellaneous, minor and technical amendments.

The Committee has no comment on this bill.

Crimes Legislation Amendment (Powers and Offences) Bill 2011

Introduced into the House of Representatives on 23 November 2011

Portfolio: Justice

This comment is in addition to the committee's comments on this bill in Alert Digest 1 of 2012.

Background

This bill amends a range of key Commonwealth law enforcement legislation relating to the effective investigation and enforcement of Commonwealth laws, including:

Schedule 7, which amends Part 1B of the Crimes Act to implement recommendations arising out of the *Australian Law Reform Commissions 2006 Report: Same Crime, Same Time: Sentencing of Federal Offenders*. The amendments will ensure that all parole decisions are able to be made at the Attorney-General's discretion and that adequate parole, licence and supervision periods are applied to federal offenders as required.

Retrospective effect

Schedule 12(12)

Subsection 12(2) of Schedule 7 relates to amendments that will affect parole. It provides that the amendments apply in relation to a person for whom a non-parole period has been fixed, whether *before*, at or after the commencement of the Schedule, but do not apply in relation to a person for whom a parole order has been made under the current provisions.

Importantly, this means that persons who were sentenced and for whom a non-parole period was fixed prior to the amendments will, nevertheless, have parole decisions made and maximum supervision periods calculated in accordance with the new provisions. Under the amendments prisoners may face later release dates and longer supervision periods than would have been applicable under the existing provisions. For example, the amendments mean that if a person is serving a federal sentence of less than 10 years for which a non-parole period has been fixed, they will no longer be granted 'automatic parole' at the expiration of the non-parole period, but the Attorney-General

will have discretion to refuse release on parole at the end of their non-parole period.

Overall, the amendments are justified in the explanatory memorandum at page 149 on the basis that they will prevent persons being released inappropriately on parole (for example, sex offenders and terrorism offenders) and to better align the system with 'the concept of truth in sentencing'.

It may be argued that the proposed amendments are not technically retrospective as they operate on antecedent circumstances (the setting of a non-parole period at sentencing) in prescribing for the future how parole decisions will be made and how supervision periods will be calculated. However, the Law Council of Australia has argued that the provisions do effectively provide for the retrospective operation of these amendments (see page 2 of the council's February 2012 supplementary submission to the House of Representative's committee inquiry into the bill).

The Scrutiny Committee is concerned about whether, from a scrutiny perspective, the application provision proposed in subsection 12(2) unfairly or unduly affects rights or interests by applying to past facts and circumstances. The distinction between legislation which has a prior effect on past events (and is therefore a straightforward example of retrospectivity) and that which bases future action on past events (and is not technically retrospective) is not always easy to draw in practice.

In sentencing offenders and setting non-parole periods, sentencing courts set terms of imprisonment on the basis of assumptions as to how parole decisions would be made and the likely supervision periods that would be applicable. It seems to the Committee that this is even more clearly the case when a statutory provision removes discretion and requires a particular parole decision to be made, such as where the statute requires that a parole decision is 'automatic'. In the current circumstances it seems that the proposed amendments will mean that some federal offenders will suffer harsher penalties than those expected when they were sentenced. The result may be considered similar, in practical effect, to retrospectively increasing a penalty after a person has been sentenced.

Although some comments in the explanatory memorandum provide a general justification for the application of these amendments, the explanatory memorandum does not address the rationale for applying the amendments to past facts and circumstances. **In light of the likely potential detriment to**

some federal offenders, the Committee requests the Minister's advice as to the justification for applying the provisions to persons who were sentenced before the schedule commences.

Pending the Minister's reply, the Committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Customs Tariff Proposal (No.1) 2012

Introduced into the House of Representatives on 16 February 2012

Portfolio: Home Affairs

Background

This bill amends the *Customs Tariff Act 1995* as follows:

- Schedule 1 extends the SPARTECA – TCF Scheme to 2014.
- Schedule 2 corrects a minor error in respect of a subheading applicable to coir yarn.
- Schedule 3 lists Serbia as a Developing Country for the purposes of the Australian System of Tariff Preferences.

Retrospective commencement

Clause 2

The terms of the motion to give effect to alterations of the Customs Tariff Act include the retrospective commencement of some items. As a matter of practice, the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people.

The explanatory memorandum provides, at page 1, a clear explanation of the method of alteration of the Customs Tariff Act: namely, that Customs Tariff Proposals are used for effecting changes, particularly where such changes are required to have effect in a short timeframe that cannot be achieved through a Customs Tariff Amendment Bill. The explanatory memorandum also explains, at page 2, that the commencement provisions reflect those of the relevant Customs Tariff Proposal and, since there is a time lag between the tabling of a Proposal in the House of Representatives and the passage of the associated bill through the Parliament, the commencement provisions of the bill are necessarily retrospective. The dates of gazettal and tabling of each applicable Customs Tariffs Proposal is also explained in the explanatory memorandum (at page 1).

The Committee appreciates the comprehensive nature of this explanation and notes that it serves as an example of the detail the Committee looks for in explanatory memoranda when considering the retrospective commencement of legislation.

In the circumstances, the Committee makes no further comment on the bill.

Electoral and Referendum Amendment (Protecting Elector Participation) Bill 2012

Introduced into the House of Representatives on 15 February 2012

Portfolio: Special Minister of State

Background

This bill amends the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984*.

Following the inquiry into the conduct of the 2010 federal election, the Joint Standing Committee on Electoral Matters tabled a report entitled *The 2010 Federal Election: Report on the conduct of the election and related matters*. The bill implements the Government response to Recommendations 1 and 24 of the report.

The bill contains provisions that will:

- allow the Electoral Commissioner to directly enrol a person if satisfied that the person is entitled to enrolment, has lived at an address for at least one month and the person is not enrolled;
- require the Electoral Commissioner to inform the person that the Electoral Commissioner is proposing to enrol the person at a particular address;
- require the Electoral Commissioner to inform the person that the Electoral Commissioner has enrolled the person at a particular address;
- allow the Electoral Commissioner to admit certain declaration votes to the scrutiny;
- allow the Electoral Commissioner to enrol certain persons who have cast declaration votes and who had been removed from the roll; and
- make a number of minor and technical amendments.

The Committee has no comment on this bill.

Environment Protection and Biodiversity Conservation Amendment (Monitoring of Whaling) Bill 2012

Introduced into the Senate on 9 February 2012

By: Senator Bob Brown

Background

This bill requires for an Australian patrol vessel to be sent to monitor any foreign whaling vessels in Australian waters, including within the Australian Whale Sanctuary.

The Committee has no comment on this bill.

Fair Work Amendment (Better Work/Life Balance) Bill 2012

Introduced into the House of Representatives on 13 February 2012

By: Mr Bandt

Background

This bill amends the *Fair Work Act 2009* to extend the right to request flexible working arrangements to all employees, especially for those employees with caring responsibilities.

The Committee has no comment on this bill.

Family Assistance and Other Legislation Amendment Bill 2012

Introduced into the House of Representatives on 15 February 2012

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Background

This bill amends the *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999* to:

- make payment of the family tax benefit Part A supplement conditional on a child meeting the immunisation requirements. This will apply to the income years in which the child turns one, two and five. As a consequence, maternity immunisation allowance will cease from 1 July 2012;
- pause the indexation of baby bonus for three years from 1 July 2012, and resets the amount of the baby bonus to \$5,000 per child from 1 September 2012;
- prevent an individual (and partner, if any) from 1 July 2012 from being entitled to family tax benefit Part A and/or Part B as fortnightly instalments on the basis of estimated income where the individual had no actual entitlement after underestimating their income for two consecutive years, starting from 2009-10;
- provide certain carer allowance recipients, who care for a disabled adult, access to bereavement payments on the death of the care receiver;
- allow access to a carer supplement for those carers whose rate of payment is reduced to nil because of income where they or their partner worked in the fortnight covering 1 July in any given year; and
- make minor and technical amendments to clarify provisions in the family assistance law.

Retrospective application Schedule 6, item 11

Item 11 of Schedule 6 proposes to make an amendment that will result in ‘an absent overseas FTB (Family Tax Benefit) child being disregarded in working out whether an individual’s rate of FTB includes the FTB Part B supplement’ (see the explanatory memorandum at page 26). The explanatory memorandum comments that this ‘corrects a longstanding error in the *Family Assistance Act*’ (at 26).

The difficulty with this amendment from a scrutiny perspective is that it commences retrospectively from 1 January 2005 (see clause 2 of the bill), which is the date that the FTB Part B supplement commenced under the *Family Assistance Act*. The explanatory memorandum states at page 26 that the ‘correction reflects the current administration of the policy and will therefore not have any actual adverse effect on individuals’.

However, the explanatory memorandum does not address whether the current administration of the policy is consistent with the existing requirements of the legislation. If the current administration of FTB policy is not consistent with legislative entitlements, then in the Committee's view, the justification provided for a retrospective change to the FTB entitlements should be more detailed. **The Committee therefore seeks the Minister's clarification as to whether the current administrative of the policy is consistent with the current legislation.**

Pending the Minister's response, the Committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Financial Framework Legislation Amendment Bill (No.1) 2012

Introduced into the House of Representatives on 16 February 2012

Portfolio: Finance and Deregulation

Background

This bill amends the following:

- the *Auditor-General Act 1997* to clarify that the Auditor-General may accept an appointment under the *Corporations Act 2001* as the auditor of any company that the Commonwealth controls;
- the *Commonwealth Authorities and Companies Act 1997* to:
 - ensure that directors of Commonwealth authorities and wholly-owned Commonwealth companies prepare budget estimates as directed by the Finance Minister, rather than the responsible Minister; and
 - ensure that directors of Commonwealth authorities and wholly-owned Commonwealth companies notify their responsible Minister of any decisions regarding certain significant events.
- the *Financial Framework Legislation Amendment Act 2010* to replace references to 'at common law and in equity' and 'at common law or in equity' with the phrase 'under the general law'; and
- the *Financial Management and Accountability Act 1997* to:
 - clarify the commencement date for determinations for Special Accounts, and ensure that certain determinations may commence on a day specified in the determination;
 - focus the operation of drawing rights on payments and remove the penalty relating to drawing rights;
 - insert a new whole-of-Government provision to enable the Finance Minister to set-off, in whole or part, an amount owing to the Commonwealth by a person with an amount owing by the Commonwealth to the same person; and

- increase certain limits which the Finance Minister may delegate to officials, in relation to the making of certain legislative instruments.

The bill also repeals the *Appropriation (Development Bank) Act 1975* and the *Car Dealership Financing Guarantee Appropriation Act 2009*.

Retrospective application

Schedule 3, items 1 and 2

Items 1 and 2 in Schedule 3 relate to the *Financial Framework Legislation Amendment Act 2010*, and seek to amend two misdescribed provisions. The amendments would commence retrospectively so that the corrections would take effect from 1 March 2011 when the misdescriptions became law. The explanatory memorandum states at page 5 that:

...this retrospective commencement of these items would not affect any entrenched or fundamental rights, but would serve to correct that minor misdescription in the FFLA 2010.

The details of the proposed changes are set out in the explanatory memorandum at page 15. However, it is not clear from the explanation whether an assurance is being given that the changes will not result in any detriment. As such, **the Committee seeks the Minister's further advice as to whether the changes could possibly cause detriment to any person.**

Pending the Minister's reply, the Committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Higher Education Support Amendment Bill 2012

Introduced into the House of Representatives on 15 February 2012

Portfolio: Tertiary Education, Skills, Science and Research

Background

This bill amends the *Higher Education Support Act 2003* to:

- clarify the application of the indexation arrangements to amounts in the Act;
- update the definitions for the course of study in dentistry and the course of study in veterinary science;
- update Melbourne College of Divinity's name in light of its approval to operate under the title MCD University of Divinity; and
- allow for technical amendments to the calculation of the voluntary repayment bonus to resolve rounding issues.

The Committee has no comment on this bill.

Marriage Amendment Bill 2012

Introduced into the House of Representatives on 13 February 2012

By: Mr Stephen Jones

Background

This bill amends the *Marriage Act 1961* to establish marriage equality for same-sex couples.

No explanatory memorandum

This bill, introduced as a non-government bill, was not accompanied by an explanatory memorandum. The Committee prefers to see an explanatory memorandum for every bill and recognises the manner in which such documents assist in the interpretation of bills, and ultimately, Acts. The Committee therefore **requests that the Private Member provides an explanatory memorandum to the bill.**

Marriage Equality Amendment Bill 2012

Introduced into the House of Representatives on 13 February 2012

By: Mr Bandt and Mr Wilkie

Background

This bill amends the *Marriage Act 1961* to ensure that all people, regardless of their sex, sexual orientation or gender identity have the opportunity to marry.

Inappropriate delegation of legislative power Schedule 1, subitem 9(1)

Subitem 9(1) of Schedule 1 enables regulations to be made which amend 'Acts (other than the *Marriage Act 1961*) being amendments that are consequential on, or that otherwise relate to, the enactment of this Act'. This enables regulations to amend Acts of the Parliament. **The appropriateness of this delegation of legislative power is not addressed in the explanatory memorandum and the Committee therefore seeks the Private Members' rationale for the proposed approach.**

Pending the Private Members' reply, the Committee draws Senators' attention to the provisions, as they may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee's terms of reference.

Members of Parliament (Life Gold Pass) and Other Legislation Amendment Bill 2012

Introduced into the House of Representatives on 9 February 2012

Portfolio: Special Minister of State

Background

This bill amends the *Members of Parliament (Life Gold Pass) Act 2002* to close the Life Gold Pass scheme to persons who enter or re-enter the Parliament at or after the commencement of the bill, and to reduce the entitlement of:

- existing LGP holders, who have never held office as Prime Minister, and their spouse or de facto partner; and
- the spouse or de facto partner of a sitting member who has qualified for a LGP;

from 25 to 10 domestic return trips per financial year, as recommended by the Remuneration Tribunal in its initial report, *Review of the Remuneration of Members of Parliament*, dated 15 December 2011.

Schedule 2 amends the *Remuneration Tribunal Act 1973* and the *Parliamentary Contributory Superannuation Act 1948* (1948 Act) to allow the Remuneration Tribunal to limit windfall gains flowing to superannuation benefits for current and former parliamentarians from increases in additional office salaries.

The Committee has no comment on this bill.

Migration Amendment (Removal of Mandatory Minimum Penalties) Bill 2012

Introduced into the Senate on 8 February 2012

By: Senator Hanson-Young

Background

This bill amends the *Migration Act 1958* to remove the mandatory minimum sentence that affects three of the Commonwealth people smuggling offences set out in that Act.

The Committee has no comment on this bill.

Migration Legislation Amendment (The Bali Process) Bill 2012

Introduced into the House of Representatives on 13 February 2012

By: Mr Oakeshott

Background

The bill amends the *Migration Act 1958* and the *Immigration (Guardianship of Children) Act 1946* relating to the *Bali Process* and taking offshore entry persons to an offshore assessment country.

No explanatory memorandum

This bill, introduced as a non-government bill, was not accompanied by an explanatory memorandum. The Committee prefers to see an explanatory memorandum for every bill and recognises the manner in which such documents assist in the interpretation of bills, and ultimately, Acts. The Committee therefore **requests that the Private Member provides an explanatory memorandum to the bill.**

Social Security and Other Legislation Amendment (Disability Support Pension Participation Reforms) Bill 2012

Introduced into the House of Representatives on 15 February 2012

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Background

This bill amends the *Social Security Act 1991* to:

- allow all disability support pensioners to work up to 30 hours a week without having their payment suspended or cancelled;
- introduce a requirement for certain disability support pensioners under age 35 with a work capacity of at least eight hours a week to engage with Centrelink through an initial participation interview and development of a participation plan; and
- allow disability support pensioners, with a severe impairment that is likely to continue for at least five years, access to their disability support pension if they travel overseas for more than 13 weeks.

The Committee has no comment on this bill.

Social Security and Other Legislation Amendment (Income Support and Other Measures) Bill 2012

Introduced into the House of Representatives on 9 February 2012

Portfolio: Education, Employment and Workplace Relations

Background

This bill amends the *Social Security Act 1991* and the *Social Security (Administration) Act 1999* to:

- change the eligibility criteria for youth allowance (other) and newstart allowance;
- provide for incentives for single parents and parenting payment reforms; and
- streamline services for job seekers by aligning the daily penalty amounts.

The bill also makes a minor amendment to the *Indigenous Education (Targeted Assistance) Act 2000* to increase the appropriation associated with the extension of the Student Education Trusts measure as part of the Cape York Welfare Reform Trials.

The Committee has no comment on this bill.

Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Bill 2012

Introduced into the House of Representatives on 16 February 2012

Portfolio: Treasury

Background

This bill provides for:

- Australian Prudential Regulation Authority (APRA) to make prudential standards; and
- Amendments to section 52 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) to expand the duties for registrable superannuation entity (RSE) licensees, to apply new trustee duties to RSE licensees of an RSE that offers a MySuper product and to apply duties to the directors of corporate trustees.

Delayed commencement Schedule 1

Where there is a delay in commencement of legislation of longer than 6 months it is appropriate for the explanatory memorandum to outline reasons for the delay in accordance with paragraph 19 of Drafting Direction No. 1.3.

In this bill Schedule 1 seeks to amend the *Superannuation Industry (Supervision) Act* to enhance the obligations of superannuation trustees and directors from 1 July 2013. Unfortunately, a discussion of why delayed commencement is appropriate was not located in the explanatory memorandum. The Committee can understand that there are reasons that the beginning of a financial year is an appropriate date for commencement, **but given the possibility of delayed commencement seeks the Minister's advice about the justification for the proposed approach.**

Pending the Minister's advice, the Committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Treaties Ratification Bill 2012

Introduced into the House of Representatives on 13 February 2012

By: Mr Katter

Background

This bill provides for Parliament to approve the ratification of treaties by resolution.

No explanatory memorandum

This bill, introduced as a non-government bill, was not accompanied by an explanatory memorandum. The Committee prefers to see an explanatory memorandum for every bill and recognises the manner in which such documents assist in the interpretation of bills, and ultimately, Acts. The Committee therefore **requests that the Private Member provides an explanatory memorandum to the bill.**

COMMENTARY ON AMENDMENTS TO BILLS

Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2012

[Digest 14/11 – response in 1st Report 2012]

On 16 February 2012 the House of Representatives agreed to two Government amendments and tabled a supplementary explanatory memorandum. The Committee has no comment on the additional material.

Fairer Private Health Insurance Incentives Bill 2012

[Digest 8/11 – no comment]

On 15 February 2012 the House of Representatives agreed to four Government amendments and tabled a supplementary explanatory memorandum and a correction to the explanatory memorandum. The Committee has no comment on the additional material.

Fairer Private Health Insurance Incentives (Medicare Levy Surcharge) Bill 2012

[Digest 8/11 – no comment]

On 15 February 2012 the House of Representatives agreed to two Government amendments and tabled a supplementary explanatory memorandum and a correction to the explanatory memorandum. The Committee has no comment on the additional material.

Fairer Private Health Insurance Incentives (Medicare Levy Surcharge-Fringe Benefits) Bill 2012

[Digest 8/11 – no comment]

On 15 February 2012 the House of Representatives agreed to two Government amendments and tabled a supplementary explanatory memorandum and a correction to the explanatory memorandum. The Committee has no comment on the additional material.

Minerals Resource Rent Tax Bill 2011 and related bills

[Digest 14/11 – still awaiting response]

On 7 February 2012 a revised explanatory memorandum was tabled in the Senate. The Committee has no comment on the additional material.

National Health Amendment (Fifth Community Pharmacy Agreement Initiatives) Bill 2012

[Digest 1/12 – no comment]

On 16 February 2012 the House of Representative agreed to one Opposition amendment and the bill was read a third time. The Committee has no comment on the additional material.

Superannuation Guarantee (Administration) Amendment Bill 2011

[Digest 14/11 – no comment]

On 7 February 2012 a revised explanatory memorandum was tabled in the Senate. The Committee has no comment on the additional material.

Tax Laws Amendment (Stronger, Fairer, Simpler and Other Measures) Bill 2011

[Digest 14/11 – no comment]

On 7 February 2012 a revised explanatory memorandum was tabled in the Senate. The Committee has no comment on the additional material.

SCRUTINY OF STANDING APPROPRIATIONS

The Committee has determined that, as part of its standard procedures for reporting on bills, it should draw senators' attention to the presence in bills of standing appropriations. It will do so under provisions 1(a)(iv) and (v) of its terms of reference, which require the Committee to report on whether bills:

- (iv) inappropriately delegate legislative powers; or
- (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

Further details of the Committee's approach to scrutiny of standing appropriations are set out in the Committee's *Fourteenth Report of 2005*. The following is a list of the bills containing standing appropriations that have been introduced since the beginning of the 42nd Parliament.

Bills introduced with standing appropriation clauses in the 43rd Parliament since the previous *Alert Digest*

Nil

Other relevant appropriation clauses in bills in the 43rd Parliament since the previous *Alert Digest*

Social Security and Other Legislation Amendment (Income Support and Other Measures) Bill 2012 2011 — Schedule 8, item 1: special appropriation clause – for a finite amount and a finite period of time.